

STATE OF MICHIGAN
COURT OF APPEALS

SOROC PRODUCTS, INC.,

Plaintiff/Counterdefendant-
Appellant,

v

M & W INDUSTRIES, INC.,

Defendant/Counterplaintiff-
Appellee.

UNPUBLISHED

July 10, 2001

No. 222650

Oakland Circuit Court

LC No. 96-529867-CK

Before: Bandstra, C.J., and White and Collins, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment in favor of defendant following a bench trial. We affirm.

Plaintiff commenced this action to recover amounts allegedly due from defendant on unpaid invoices. Defendant filed a counterclaim, alleging that plaintiff owed it approximately \$37,000 for work done on an earlier G-55 dunnage project, and that the parties agreed to set off that amount against future invoices. The trial court found that such an agreement had been made and entered judgment of no cause of action on plaintiff's principal complaint. Further, the court awarded defendant \$12,168.86 on its counterclaim.

Plaintiff first argues that the trial court erred in finding that it agreed to pay for the disputed rework services performed by defendant on the G-55 dunnage project. We review the trial court's findings of fact under the clearly erroneous standard. *Gummas v D & T Construction Co*, 235 Mich App 210, 221; 597 NW2d 207 (1999). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been made. *Id.*

Here, conflicting testimony was presented regarding whether plaintiff agreed to pay for the additional work that defendant performed. Defendant's representative testified that he spoke with plaintiff's vice president, who agreed to pay for the work. While plaintiff denied this, we give due consideration to the trial court's superior opportunity and ability to judge the credibility of the witnesses on this point. *Sparling Plastic Industries, Inc v Sparling*, 229 Mich App 704, 716; 583 NW2d 232 (1998). Moreover, defendant's version of the events is supported by

evidence that plaintiff never objected to the invoice after receiving it and allowed defendant to move forward on the production schedule that defendant proposed. Additionally, while plaintiff points to the fact that it did not issue a purchase order for the additional work, there was evidence that the parties had an ongoing, casual relationship and that formal documentation was not always used. Contrary to plaintiff's assertions, the record does not indicate that the trial court improperly shifted the burden of proof to plaintiff with regard to the question whether an agreement existed, or any of defendant's other claims.

Plaintiff also argues that the trial court erred in its finding regarding whether defendant was at fault for the problems with the G-55 dunnage. We disagree. Defendant's representative testified that he was familiar with the product, that he was experienced in reading prints and that he "absolutely" followed the print that was provided by plaintiff. He explained in detail how the problem with the product was not with his company's mounting, but rather, with plaintiff's plastic bases. He also testified that at no time did plaintiff blame defendant for the problems and that plaintiff agreed to pay for the additional work once the problem was explained. In light of this evidence, we find no clear error in the trial court's decision.

We also reject plaintiff's claim that it is entitled to a credit for the costs of the initial reworking performed by defendant. The evidence showed that these charges were explained to plaintiff and that plaintiff agreed to pay them. Defendant expended efforts in trying to resolve the problem which, according to the testimony, was caused by plaintiff's plastic bases. Accordingly, this claim fails.

Affirmed.

/s/ Richard A. Bandstra

/s/ Helene N. White

/s/ Jeffrey G. Collins